



Internet Association

November 4, 2015

The Honorable John Thune
Chairman
Senate Committee on Commerce, Science, and Transportation
United States Senate
512 Dirksen Senate Building
Washington D.C., 20510

The Honorable Bill Nelson
Ranking Member
Senate Committee on Commerce, Science, and Transportation
United States Senate
512 Dirksen Senate Building
Washington D.C., 20510

Dear Chairman Thune and Ranking Member Nelson:

The Internet Association is the unified voice of the Internet economy, representing the interests of leading Internet companies and their global community of users.¹ It is dedicated to advancing public policy solutions to strengthen and protect Internet freedom, foster innovation and economic growth, and empower users. Important to our mission is the advancement of public policies that preserve free speech online. We applaud today's hearing on *The Consumer Review Freedom Act (S. 2044)*, a bipartisan bill introduced by Chairman Thune, Senator Schatz, and Senator Jerry Moran.²

In today's digital economy, nearly 70% of consumers now rely on online consumer reviews for information on where to eat, shop, travel, and more.³ The Internet enables millions of consumers to access timely, honest feedback that empowers them to make informed choices when purchasing goods or services. The result of the efficiency gains for these and other web enabled information sharing is a significant consumer surplus that benefits our economy in myriad ways. Experts calculate this consumer surplus was the equivalent of billions of dollars annually.⁴

Unfortunately, an increasing number of companies who are unhappy with consumer reviews are utilizing non-disparagement clauses, often buried in non-negotiable form contracts, to stifle online consumer free speech. These clauses often impose penalties as high as hundreds of thousands of dollars for negative reviews by unknowing consumers of goods and services nationwide. In particularly egregious cases,

¹ The Internet Association's members include Airbnb, Amazon.com, auction.com, Coinbase, Dropbox, eBay, Etsy, Expedia, Facebook, Gilt, Google, Handy, LinkedIn, Lyft, Monster Worldwide, Netflix, Pandora, PayPal, Practice Fusion, Rackspace, reddit, Salesforce.com, Sidecar, Snapchat, SurveyMonkey, TripAdvisor, Twitter, Yahoo, Yelp, Uber, Zenefits, and Zynga.

² We respectfully request that this letter be submitted to the record for this hearing.

³ *American Lifestyles 2015: The Connected Consumer – Seeking Validation from the Online Collective – US 2015*, Mintel (June 3, 2015) <http://www.mintel.com/press-centre/social-and-lifestyle/seven-in-10-americans-seek-out-opinions-before-making-purchases>.

⁴ Hal Varian, The value of the Internet now and in the future, *The Economist* (Mar. 10, 2013, 3:49PM), <http://www.economist.com/blogs/freeexchange/2013/03/technology-1>; Shane Greenstein, Measuring consumer surplus online, *The Economist* (Mar. 11, 2013, 3:20PM), <http://www.economist.com/blogs/freeexchange/2013/03/technology-2>.



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individuals have been threatened with reporting to credit agencies and other tactics meant to intimidate and silence consumers.⁵

The range of form contracts engaging in this attempt to stifle speech is varied across the nation and includes hotels and restaurants, apartment buildings, repair services, and more.⁶ As Internet platforms utilized by millions of businesses provide consumers unprecedented opportunities to engage in the feedback economy, the threat against consumer-generated speech is growing rapidly and increasingly difficult to quantify.

A patchwork of state laws, court decisions, and federal agency actions have attempted to protect consumers subject to non-disparagement clauses. However, we must address the issue on a national level to ensure the protection of all consumers online. The right to free speech – including online reviews and comments from customers – is critical to our rights as Americans and should not be curtailed.

The Consumer Review Freedom Act, which would prohibit the use of these non-defamation clauses, will protect consumers nationwide from these meritless attempts to silence free speech. The Internet Association strongly supports this legislation's effort to protect online reviewers of goods and services from clauses that inhibit honest reviews and commends the Committee for examining this issue in detail during today's hearing.

The Consumer Review Freedom Act is narrowly tailored to non-disparagement clauses in form contracts that do not allow individuals a meaningful chance to negotiate a contract, and provides the necessary protections for businesses, including for medical and personal information, trade secrets, and confidential information.⁷ The bill strikes a fair balance between speech rights and legitimate business needs. The Internet Association additionally supports the intent of the bill to combat these clauses in the cases of form contracts for goods and services, and would support clarifying language to provide businesses and agencies certainty in enforcement of this legislation.

We look forward to hearing the discussion at the Committee's hearing today, and to working with you and your staff to pass *The Consumer Review Freedom Act*.

Respectfully Submitted,

Michael Beckerman
President & CEO
The Internet Association

⁵ Palmer v. KlearGear, No. 13-cv-00175 (D. Utah, filed Dec. 18, 2013).

⁶ Tim Cushing, *Here are the Companies that Want to Charge You \$2,500-\$100,000 for Negative Reviews*, TechDirt (Dec. 17, 2014, 8:27AM), <https://www.techdirt.com/articles/20141214/16102629441/here-are-companies-that-want-to-charge-you-2500-100000-negative-reviews.shtml>.

⁷ S. 2044, 114th Cong. § 2(a)(3) (2015).